

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No: EB-10-MA-0122
Judith V. Smith, formerly known as Judith	)	
McFarlane	)	NAL/Acct. No: 201132600006
	)	
Miami, Florida	)	FRN: 0020863734
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** May 16, 2011

**Released:** May 16, 2011

By the Resident Agent, Miami Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Judith V. Smith, formerly known as Judith V. McFarlane (“Ms. Smith”),<sup>1</sup> apparently willfully violated sections 301 and 303(n) of the Communications Act of 1934, as amended (“Act”),<sup>2</sup> by operating an unlicensed radio transmitter and by refusing to allow inspection of the radio installation located in her residence in Miami, Florida. We conclude that Ms. Smith is apparently liable for a forfeiture in the amount of twenty-two thousand dollars (\$22,000).

**II. BACKGROUND**

2. On June 27, 2010, agents from the Enforcement Bureau’s Miami Office (“Miami Office”) used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 95.9 MHz to a radio station operating from Ms. Smith’s residence in Miami, FL. The agents monitored the transmissions on 95.9 MHz and heard the station identify itself as “Gospel Reggae FM.” According to publicly available Florida corporation records, Ms. Smith is the owner of a business called “Gospel Reggae FM.com” that has a mailing address matching Ms. Smith’s residence in Miami, FL. The agents determined that the signals from Ms. Smith’s residence exceeded the limits for operation under Part 15 of the Commission’s rules<sup>3</sup> and therefore required a license. A review of the Commission’s records showed no authorization issued to Ms. Smith, or to anyone for operation of an FM broadcast station on this frequency, at or near this address.

3. Also, on June 27, 2010, the agents knocked on the door of the residence and requested to inspect the radio station located on the premises. The individual who answered the door acknowledged

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<sup>1</sup> Judith V. Smith is Judith V. McFarlane’s married name.

<sup>2</sup> 47 U.S.C. §§ 301, 303(n).

<sup>3</sup> Part 15 of the rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239.

that she was the owner and occupant of the residence and identified herself as Judith McFarlane. However, Ms Smith refused the agents' request to inspect. She then closed the door and left for several minutes, during which time the agents observed that the radio station on 95.9 MHz ceased operation.

### III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>5</sup>

5. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.<sup>6</sup> On June 27, 2010, Ms. Smith operated an unlicensed radio station on the frequency 95.9 MHz from her residence in Miami, FL. A review of the Commission's records revealed that Ms. Smith did not have a license to operate a radio station at this location. Because Ms. Smith knowingly operated the station, we find the apparent violation willful. Based on the evidence before us, we find that on June 27, 2010, Ms. Smith apparently willfully violated section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

6. Section 303(n) of the Act states that the Commission has authority to inspect radio installations associated with stations required to be licensed or authorized by the Act.<sup>7</sup> On June 27, 2010, Ms. Smith refused an official request by Commission agents to inspect the radio installation located in her residence. Because Ms. Smith explicitly refused a reasonable and duly made request by Commission agents, we find the apparent violation willful. Based on the evidence before us, we find that on June 27, 2010, Ms. Smith apparently willfully violated section 303(n) of the Act by refusing an official and duly made request by Commission agents to inspect the radio installation located inside her residence while the station was in operation.

7. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000, and for refusing to allow inspection is \$7,000.<sup>8</sup> In assessing the monetary forfeiture amount, we must also take into account

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<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>5</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>6</sup> 47 U.S.C. § 301.

<sup>7</sup> 47 U.S.C. § 303(n).

<sup>8</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the*

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the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup> Consequently, the \$10,000 base forfeiture amount is subject to adjustment. Commission records show that the Miami Office previously issued a *Notice of Unlicensed Operation* (“*NOUO*”) to Ms. Smith, then using the name Judith McFarlane, for operation of an unlicensed station on the same frequency at the same location.<sup>10</sup> The fact that Ms. Smith continued to operate after being put on notice that her unlicensed operation contravened the Act, the Commission’s rules, and related Commission orders demonstrates a deliberate disregard for the Commission’s requirements. Based on the evidence before us, we find that an upward adjustment is warranted and so increase the forfeiture amount for the violation of section 301 of the Act from \$10,000 to \$15,000.<sup>11</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Ms. Smith is apparently liable for a forfeiture in the amount of \$22,000.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission’s rules, Judith V. Smith is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-two thousand dollars (\$22,000) for violation of sections 301 and 303(n) of the Act.<sup>12</sup>

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission’s rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Judith V. Smith **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625,

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*Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> *Judith V. Smith*, Notice of Unlicensed Operation (Enf. Bur., Miami Office, rel. Dec. 19, 2008).

<sup>11</sup> See *Nounoune Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (upwardly adjusting the base amount by \$10,000 because violator operated an unlicensed radio station on multiple days with full knowledge that such action violated the rules).

<sup>12</sup> 47 U.S.C. §§ 301, 303(n), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

Washington, D.C. 20554.<sup>13</sup> For questions about payment, contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Also, Judith V. Smith shall send an email notification to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov) on the date said payment is made.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Commission's rules. The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, PO Box 520617, Miami, FL 33152 and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be emailed to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Judith V. Smith at her address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena  
Resident Agent  
Miami Office  
South Central Region  
Enforcement Bureau

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<sup>13</sup> See 47 C.F.R. § 1.1914.